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Prohibition of Intera Religion Marriage in Indonesia

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Abstract

As a country with Pancasila as the philosophy, the first pillar is believing in God the One, therefore marriage is closely related to the issue of religion. Law number 1 in 1974 on Marriage stated that a marriage should be done by two people with the same religion and beliefs. Inter-religion marriage between Indonesian citizens in foreign states violate the regulations found in article 2 paragraph (1) and article 56 paragraph (1) of Law number 1 in 1974 on Marriage. The problems analyzed in this paper are: first, the legal status of inter-religion marriage in law system of Indonesia; and second, inter-religion marriage performed by Indonesian citizens in foreign countries. The research of this paper shown that Indonesia prohibits inter-religion marriage since it violates the principle of "the belief in the one and only God," which expects marriage to be performed only by a couple who share the same religious belief.

Keywords: Indonesia, Inter-religion Marriage, Legitimate Marriage, Marriage Law, Religion

Abstrak

Sebagai sebuah negara dengan Pancasila sebagai filosofi, pilar pertama adalah percaya kepada Tuhan yang Maha Esa, maka perkawinan berkaitan erat dengan isu agama. Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan menyebutkan bahwa perkawinan yang sah adalah perkawinan yang dilakukan menurut hukum agama dan kepercayaan. Mayoritas agama dan kepercayaan di Indonesia menghendaki umatnya untuk melangsungkan perkawinan dengan pasangan yang memiliki kesamaan agama dan kepercayaan. Perkawinan antar agama yang dilakukan di luar negeri dianggap melanggar ketentuan yang tercantum dalam Pasal 2 ayat (1) dan Pasal 56 UU Perkawinan. Permasalahan yang di analisa dalam tulisan ini adalah: pertama, status hukum perkawinan antar agama dalam sistem hukum Indonesia; kedua, perkawinan antar agama yang dilakukan di luar negeri. Penelitian ini menunjukkan bahwa Indonesia melarang perkawinan antar agama karena dianggap melanggar ketentuan yang ada. Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan menganjurkan perkawinan dilakukan oleh pasangan yang memiliki kesamaan agama dan kepercayaan.

Kata Kunci: Agama, Hukum Perkawinan, Indonesia, Perkawinan Antar Agama, Perkawinan Yang Sah

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Introduction

The philosophy of Indonesia as a nation is the Pancasila, whose first principle is the "belief in the one and only God." This first principle serves as the fundamental of Law Number 1 the Year 1974 concerning Marriage (hereinafter Marriage Law). The principle is found in article 1, and article 2 paragraph 1 of the regulation. Article 1 declares that marriage is an inner and outer bond between a man and a woman as husband and wife, with the purpose to form an everlasting family based on the belief in the one and only God. Article 2 paragraph 1 declares that marriage is only legal if held under the consent of each marriage participant's religious belief and rules. Based on these two articles, it can be concluded that marriage in Indonesia is based on religious values. Thus, every

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marriage has to base itself on the religious foundation. Moreover, marriage can only be held if the participants share the similar religious belief.

Inter-religion marriage, however, has been a long-occurring phenomenon in the society. Marriage is a cultural universal which exists in every society in varying differences (**Uddin, 2009**). Marriage is more than an ongoing relationship between persons rather it establishes a tie between two social groups which can be families, cultures, opinions, and castes. A couple of inter-religion marriage go through numerous problems in this part of the world, an example, religious and social barriers and limitations, conservatism, varying beliefs, unfavorable behavior and many more. Marriage is one of the most important social institutions, perhaps the greatest and most important of all institutions in human society (**Nambi, 2005**).

An inter-religion marriage which also called mixed religious marriage defined as a marriage between persons of differing religions (Blau, 1984). Marriage and religious is inseparable. Every religion and beliefs definitely must have their own regulation towards the marriage that religion and beliefs expect. Therefore, that makes a marriage needs to be done by a man and a woman who has the same religion and beliefs. Because of religion is a fundamental construction of marriage. And, by having the same religion and beliefs makes a couple has a common vision in carrying out a marriage.

Marriage should only be performed by a couple of the same religious beliefs. Thus, it will not deviate from religious rules. Inter-religion marriage is prohibited and forbidden (haram), which, based on the regulation, is absolute. If people of different religious beliefs still insist on getting married, one of the spouses should convert to the religious belief of the other, eliminating the possibility of religious dualism in the household. If a man and woman who wish to get married have different religious beliefs, one of them should follow or convert to the religion of the other. If this applies, there would not be any difficulty to perform a marriage. The Islamic Law Compilation moreover regulate that a man is forbidden from marrying a non-Moslem woman; as well as a woman is forbidden from marrying a non-Moslem man.

On the case of inter-religion marriage, law experts have varying opinions as First, inter-religion marriage should not be allowed in Indonesia, since it deviates from the rules of religion and law. It could even be rightly considered a violation of the law. Second, inter-religion marriage can be performed, but only after a special regulation concerning it has been formulated. Third, inter-religion marriage can be performed, based on Article 66 of Marriage Law declaring that GHR still applies. Fourth, inter-religion marriage performed with the wife to comply with the law of the husband's religion (**Zahid, 2002**).

Since Indonesian couples obstructed with difference of religious beliefs cannot perform marriage in Indonesia, they have resorted on several alternatives to get married among which are converting so both of the couple will be of same religious beliefs, performing marriage involving two religious customs on different occasions, or performing marriage in another state/country legitimating inter-religion marriage. The

latter is the most chosen option since people of different religions can get married without any difficulty.

Marriage is a very important event in a human's life (Islam, 2014). It is a legal relationship between a man and a woman to live together as husband and wife. This bond is a formal relationship came from the fact, it is real both for themselves and for other people. Marriage is a right for every individual, it is guaranteed by Article 10 under Law Number 39 of 1999 concerning Human Rights, which states that every person has the right to create a family and continue their descend through a valid marriage.

Marriage is also guaranteed in Article 16 of Universal Declaration of Human Rights, which stated that "mature men and women, without restrictions to nationality, citizenship or religion, have the right to get married and to create a family. They have the same rights in terms of marriage, during marriage and in case of divorce." Also, humans are created with diversities; ethnic groups, culture, and faith. Indonesian citizen is entitled to be married to anyone as long as such marriage is entered in conformity to the applicable laws in Indonesia (Arianto, 2017).

Law Number 1 of 1974 of Marriage (hereinafter referred to as Marriage Law), is a legal basis for marriage in Indonesia. Marriage is defined as a physical and mental bond between a man and woman as husband and wife, with the purpose of creating a happy and eternal family or household, based on belief in one God.

Marriage itself is not a complicated matter to be executed if all of the requirements in the Marriage Law have already fulfilled. However, it shall be complicated and hard to be executed in case the couple holds a different religion. This condition can raise problem, it shall hamper the execution of the marriage. Inter-religion marriage is not regulated either under Marriage Law or other rules and regulations. This inter-religion marriage itself can have a different interpretation. In general, inter-religion marriage is where the couple have different beliefs (for example when a Muslim married to a Christian) (Dewi, 2018).

Article 2 paragraph (1) of Marriage Law states that a people's marriage shall be valid, in case it is executed in accordance with respective religion and beliefs. Despite that the Article 8 alphabet f of Marriage Law does not discuss inter-religion marriage, however, that article states that a marriage between two persons are prohibited if their respective religion or other religion regulate so. There is no chance for couples who have different religious or faith to get married, because formally religious law doesn't allow someone to marry anyone who has different religion (Setiyowati, 2015). From the provision in the said article, it can be said implicitly that Indonesian citizen cannot validly get married to a partner who has different religion and belief unless one of them convert to another (Richmond, 2009).

Inter-religion marriage has already become a fact and a reality which cannot be supervised by any country in the world (Hamit, 2013). In Indonesia itself, the execution of inter-religion marriage is still hard to be done, since there is no umbrella provision to

handle it. Also, Marriage Law still not clearly allow nor deny marriage between a couple who have a different religion.

However, such condition does not hamper society to execute inter-religion marriage, it is still done by many people in the society. People in society will find the easiest method to do the inter-religion marriage. The problems analyzed in this paper are: first, inter-religion marriage performed by Indonesian citizens in foreign countries; and second, the legal status of inter-religion marriage in law system of Indonesia.

Discussion

The Implementation of Inter-Religion Marriage Between Indonesian Citizens in the Foreign States

Inter-religion marriage still deviates the regulation of Article 2 paragraph (1) of the Marriage Law. Thus, it is still impossible to perform inter-religion marriage in Indonesia. In practice, however, many Indonesian citizens attempt a way around it by performing an inter-religion marriage in foreign states, with the intention to obtain the legal status on it. Recently, there has been more and more inter-religion marriages held, especially after the uprising issues on basic human rights. Inter-religion marriage is a reality among the plural (heterogeneous) society in Indonesia, sprouting as a result of the diversity in races, tribes, customs, and religions.

Despite that the inter-religion marriage is not specifically regulated in the Marriage Law in Indonesia, it is still being executed. As it is described in the background of this study, Wahyono Darmabrata states that there are 4 (four) ways of inter-religion marriage done by Indonesian citizens, as followed:

First, apply for Court Stipulation First. Marriage between Julvian Arda Pamungkas (A Muslim Man) with Rossy Marlina Ngahu (A Christian Woman), Stipulation of District Court of Surakarta No. 186/Pdt.P/2018/PN.Skt. Dated on 22nd of May 2018. The applicants have agreed to execute their marriage in front of the employee of the Population and Civil Registration Office in Surakarta City. Yet, due to differences in religion between the couple, the officer rejected their application in order to apply for court stipulation first. One of the considerations of the court to approve the application submitted by this couple is that the court believes that the Marriage Law does not state any provision which specifically says that difference in religion and belief are considered as a prohibition of marriage, thus it resulted into the vacuum of law (*rechts vacuum*). On the other hand, the court is using Article 27 paragraph (1) which states “*all citizens shall be equal before the law and the government shall be required to respect the law and the government, with no exceptions.*” and 29 paragraph (2) of the 1945 Constitutional Law which states “*The States guarantees all persons the freedom of worship, each according to his/her own religion or belief.*” As its basis to strengthen its stipulation related to the rights of citizens to hold religions, it is the main reason why the couple’s application was approved. The Applicants are permitted to execute and register their inter-religion marriage in Population and Civil Registration Office in Surakarta City.

In another case, Marriage Application between Neneng Oktora Budi Asri (A Muslim Woman) and Yafet Arianto (A Christian Man). The stipulation of District Court of Blora No. 71/Pdt.P/2017/PN Bla Dated on 17th of March, 2017. The Judge uses the basis of rules in Islam and Christian religions in considering the validity of the marriage. In Islamic teachings, there is a prohibition for muslim women to get married to non-muslim men, it is QS. Al-Baqara verse 221 which states *“and do not marry polytheistic women until they believe. And a believing slave woman is better than a polytheist, even though she might please you. And do not marry polytheistic men [to your women] until they believe. And a believing slave is better than a polytheist, even though he might please you. Those invite you to the Fire, but Allah invites to Paradise and to forgiveness, by His permission. And He makes clear His verses to the people that perhaps they may remember.”* and Article 44 of the Islamic Law Compilation (KHI) which states that a Muslim women were prohibited to marry a man who is not a Muslim. Meanwhile, based on the description from a pastor in GBI Arumdalu church, Christian does not permit inter-religion marriage. This couple planned to execute their marriage in this church, the church said that it shall permit the marriage as long as the Muslim woman agrees to let go all attributes showing her religion as a Muslim and agree the marriage shall be following Christian’s rules. Since the applicants persistently hold onto their respective religions, while both Islam and Christian do not permit inter-religion marriage, moreover this shall breach provision in the article 2 paragraph (1), thus, the application was dismissed.

Second, Executing Marriage Complied to one Religion. In this regard, the bride and groom persist to hold onto their respective religion and beliefs. However, when an inter-religion marriage is held, one of the parties must comply with either the wife’s or the groom’s religion, in order for a marriage to be executed. Author of this study received information directly from the relevant parties through the online interview, and they want their identities to be hidden. GM (29 years old, Christian woman) is married to AS (Muslim man). GM and AS held their inter-religion marriage in 2012 in Office of Religious Affairs, complies to Islamic law. They did their marriage vow Islamic way (*ijab qabul*) and registered their marriage in Office of Religious Affairs in Mlati Sub-district, Sleman Regency, Special Region of Yogyakarta. Based on the information from them, in order to hold an inter-religion marriage complies to one of the bride’s and groom’s religion, Resident Identity Cards stating that both are Muslims were needed. That said, it is possible for a person who wants to have inter-religion marriage complies to either bride’s or grooms’ religion to have two identity cards (Interview with a resource with initial of GM on 10 September 2018).

After marriage, GM return to Christianity and her husband kept holding onto Islam, thus, they are bound in marriage with different beliefs. At the time of registration, there was no impediment, since at the time of marriage, the religious of GM in her Resident Identity Card was a muslim. As a party executing inter-religion marriage, GM argues that with respect to the regulation in Indonesia, particularly Marriage Law and

Decision of Constitutional Court Number 68 of 2014, gave many complication. Moreover, if no one between the couple who is willing to submit to her/his partner's religion. Particularly, for the couple who have financial difficulties and cannot execute marriage abroad.

Third, Marriage Executed Twice based on Respective Religions. One of Non-Governmental Organization (NGO) that helps couple who wants to execute inter-religion marriage is Religion and Peace Study Center (ICRP). Its priority is to help couple with different religion and beliefs to be able to get married while still hold onto their respective religions and the marriage shall be held by 2 (two) ways consecutively (Nurcholish, Interview, 25 October 2018).

ICRP itself records that they already help 809 couples to execute inter-religion marriage in Indonesia. It is indeed their priority to help those couples to be able to get married while still complying to their own religions and beliefs. The reason is that to avoid impression that there is a force from one party to another to convert religion. Religion is a right for a person, and it cannot be forced by anyone.

One of the examples of inter-religion marriage held twice in compliance with respective religions of the couple, which assisted by the ICRP is the marriage for a couple from Yogyakarta. This marriage was between a muslim man from East Java and a catholic woman, Chinese-Padang descendant. They both held their marriage in Yogyakarta in January 2018. The couple had marriage vow Islamic way. After some Islamic customary procession, they undergone marriage blessings from the church (Tribun, 15 January 2018).

Fourth, Execute Marriage Abroad. Execute inter-religion marriage abroad is the most popular solution nowadays. Notably, it is convinced as the easiest way compared to doing the same in Indonesia. Couple who get married abroad tends to choose a country which does not have religious requirements in executing marriage.

By executing marriage abroad, the couple must comply to the law of the country they have chosen. After execute a marriage, they have to register their marriage in the civil registry of such country. After being registered and obtained legality, as well as obtained proof that they have get married in that country, their marriage registration shall be received by the officer in Population and Civil Registration Office. With respect to the registration of the marriage, for example in the Population and Civil Registration Office of Bandung City, the inter-religion marriage registration is not an everyday event. Meanwhile for regular marriage, which is not an inter-religion, it can occur until 10 (ten) registrations per day. Moreover, the registration of the inter-religion marriage decreasing in 2014 after the new regulation that the inter-religion marriage should apply for Court Stipulation first. (Nugraha, Interview, 5 September 2018). In Indonesia itself, the real example of couple who undergone inter-religion marriage abroad is Dimas Anggara, who is muslim and Nadine Chandrawinata, a Christian, in Nepal in 2018.

Generally, the Marriage Law allows marriage outside the borders of Indonesia. This is evident in article 56 paragraph (1) which declares that marriage performed outside

Indonesia between two Indonesian citizens, or one Indonesian citizen and one foreign citizen is only valid if performed, under the consent of the law of the state where the marriage is held; and for Indonesian citizens, as long as not deviating the regulations of this law. Moreover article 56 paragraph (2) declares that within a year after the return of the married couple in Indonesia, certificate of marriage has to be registered in the nearest Marriage Registration Office of their address.

Based on article 56 paragraph (2), the marriage held outside Indonesia will be registered in the Civil Registration Office. Many argue that the certificate of marriage should not be registered by the Office, since it violates the regulation of the article 56 paragraph (1) in its final line "..., and for Indonesia citizen, as long as not deviating the regulation of this law."

The officers of the Civil Registration Office should refuse to register inter-religion marriage held outside the country. After all, this kind of marriage is often held only before the court, without proper religious ceremony of a church or a mosque or other religious institutions, thus, violating article 2 paragraph (1) of the Marriage Law. There has also been argument that couples of inter-religion marriage often commit law manipulation, in order to merely be considered valid by the marriage registration.

However, the Civil Registration Office always accepted the registration of marriage since it is in accordance with article 56 paragraph (2) and is also based on the commitment to preserve the harmony of bilateral relationship between Indonesian and foreign states. Therefore, if a country legalizes a marriage, Indonesia also has to recognize the validity of the marriage in its civil registry. The expectation of the writer of this paper is that, foreign states will also consider the aspects in the Marriage Law in Indonesia before legalizing inter-religion marriage, so violation and deviation from Indonesian Marriage Law can be minimized.

Marriage Law gives room to the couple who wants to execute their marriage abroad legally. It is interpreted from the provision in the Article 56 of the Marriage Law which states that marriage conducted abroad between two Indonesian citizens or between an Indonesian citizen and a Foreign Citizen, is valid, if it is conducted pursuant to the law applicable in the country where the marriage is held and for Indonesian citizen, it shall be valid as far as it does not breach the provision in this Law. And within 1 (one) year after the husband and wife come back to Indonesia, their marriage certificate must be registered in the Marriage Registry Office where they live.

An interpretation can be made from this Article 56 of Marriage Law, that in determining validity of marriage, Indonesia is following *lex loci celebrationis* principle, which does not abandon the citizenship principle. That article does not determine which articles that must comply to local law and which ones that must comply to the origin country. The Article 56 states that Indonesian Citizen who wants to execute a marriage abroad, must comply to this article and shall be prohibited from breaching Indonesian marriage law. Based on that article, it can be said that Indonesian marriage law follows International Private Law, namely the domicile principle or *lex loci celebrationis*. Hence, the marriage conducted abroad which is not in accordance with Indonesian marriage law with the basis of religious law, shall arise its own polemic (Wahyuni, 2016).

Quoting from Sri Wahyuni's argument, Article 56 of the Marriage Law can be seen as public order which limits the applicability of foreign law. Thus, inter-religion marriage abroad with civil marriage model, is not a religious marriage, it is not in accordance with Indonesian law. That is considered as a breach of public order of the state, and thus, the state might annul such legal status at times.

Aside from what is described above, there are other arguments on the validity of inter-marriage abroad. The vested rights principle is the reverse of the public order principle above. This principle tends to support the applicability of foreign law. Inter-religion marriage executed abroad shall still be applicable and considered as valid when the couple is back to Indonesia.

Both reversed principles above give different point of view in relation to the validity of inter-religion marriage abroad. However, if it is seen from Article 56 of Marriage Law, even when the marriage is executed abroad, it has to both comply with the law where the marriage is held and also cannot be contravening with the law applicable in Indonesia. A valid marriage is when it is considered so by the religion or beliefs of the couple. It means, cross-religion married abroad must not be contravening with religious law. If it breaches existing provisions, then it shall be considered as breaching public order in Indonesia (**Wahyuni, 2016**).

Related to the vested rights principle, it can only be obtained if the requirements in the Article 56 have been fulfilled. If the marriage does not breach existing provisions in Indonesia, then the validity of the marriage can be obtained and registered in Indonesia. In terms of the validity of the inter-religion marriage, it has to be firstly reviewed, whether or not such marriage contravene with the marriage law in Indonesia which is based on religious law (**Wahyuni, 2016**).

The Legal Status of Inter-Religion Marriage in Indonesia

The fourth amendment of the 1945 Constitution of the Republic of Indonesia declares that every citizen has the right to form a family and continue his ancestral line through legitimate marriage. Article 1 of the Marriage Law declares that legal marriage is one that is performed based on the religious law of the respective citizen. Thus, it can be concluded that marriage can only be performed under a condition where both citizens wishing to get married are of the same religious belief, eliminating any possibilities of inter-religion marriage. This is further emphasized by article 8 point f of the Marriage Law which declares that marriage is prohibited among those whose relationship is forbidden by the rules of their religions.

Marriage in Islam is something sacred thing that demonstrate the power of God (**Sewenet, 2017**). Under Islamic law, marriage is viewed as a civil contract freely entered into subject to certain conditions between a man and a woman in line with Islamic principles (**Ibrahim, 2016**). Islamic Law absolutely prohibits inter-religion marriage for Moslem women. It is considered haram or forbidden in the rules of Islam. The consideration is for the good of religion of the Muslim women which may lose their

religion in such marriage. And, for the children which could follow the religion of his father who is not a Moslem (**Cigdem, 2015**). However, for Moslem man, there have been differing opinions by the experts of Islamic Law. Some absolutely prohibits it as well; some allow it under certain conditions. After consideration that it does more harm than good, the Indonesian Ulemas Council (MUI) issued a rule (fatwa) making inter-religion marriage forbidden. In another case, Muslims can marry from any religion group if his/her partner is willing to convert to Islam. However, the marriage could not be blessed and in effect until the conversion is realized (**Sewenet, 2017**).

Christian generally, Protestant Church avoids inter-religion marriage, except on certain situations after fulfilling certain conditions. Catholic sees marriage as a sacrament (**Tudor, 2016**). Catholic Church avoids inter-religion marriage as much as possible, dispensation on inter-religion marriage, however, could be granted by a bishop.

Buddhist belief considers every marriage good. Thus, inter-religion marriage is allowed. However, as a Buddhist, in order to form a happy family the Buddhist shall follows the teachings of Buddha about practices the life of the truth. Buddha has shown a fundamental harmonious, harmony, and balance marriage. It is form if the husband and the wife were in the same side of equation or conformability in the beliefs, decency, and wisdom. Still, Buddhist considers a marriage between a man and a woman with the same religion and faith (**Wahyuni, 2010**).

In Hindu, marriage is a social incident which have the objective of good practices or moral. Marriage basically uniting the family, give to the descendants of right of inheritance, and allow which sexual intercourse which is strictly prohibited. According to the rules and regulations of Hinduism, an Inter-religion marriage is an anti social thing, a punishment, not in a biblical, an obstacle and ill treatment of in the long run which would lead to misery (**Kamruzzaman, 2016**). Hindu prohibits inter-religion marriage, since difference in religious belief means difference in life principle.

However, in Kong Hu Chu, permission on inter-religion marriage can be granted (**Meliala, 2006**). There is no special rule that allow or prohibits a marriage between two different beliefs. A marriage was declared valid if going on between an adult men and women, no element of compulsion, approved or for their willingness to both sides, received the blessing both parents or elders, edified in a religious ceremony, although the other one does not required to move belief beforehand.

The experts on Islamic Law further express their rejection towards inter-religion marriage and elaborate that it is a latent process that erodes religious faith, which may lead to religion losing its vital importance in society (**Ramulyo, 2004**). The Ministry of Religion in Indonesia expresses that marriage in Indonesia is something that cannot be independent from religious values. Indonesia is not a secular country. Thus, inter-religion marriage is a hard-to-implement concept in Indonesia. Religion occupies a strategic and important position in the cohabitation, including marriage. If legitimization upon inter-religion marriage is to be made, problem on the foundation of

a religion may surface. Every religion considers its teaching to be the ultimate truth, making it hard to unite the differing perspectives in a marriage.

Inter-religion marriage also has the potential to bring legal problems as, the validity of the marriage will determine the rights and obligations of the husband and wife. A wife's right to sustenance and shared property depends entirely on whether or not the marriage is valid before law. Furthermore, a child born out of invalid marriage will only process legal relationship with the mother (**Bahrudin, 2014**). Therefore, the rights of a child concerning the father will not be recognized by the law. Also, the right to bring up a child can only be obtained by a couple of valid marriage.

Furthermore, the legal status of an inter-religion marriage can still be canceled with the reasons of its being invalid before the law despite already obtaining an authentic marriage proof in form of a marriage book. This cancelation of marriage may mentally hurt a child in the family of a canceled marriage; there is a problem regarding inheritance. Even if a couple of inter-religion marriage has been legalized, the children born out of the marriage will process no rights to inheritance. The difference in religion will cancel the rights concerning inheritance. It could be argued, that the prohibition on inter-religion marriage is also there to prevent a child from losing the right to inheritance. A child cannot have dual religious-beliefs. The consequences to this is that, a child can only take either religious beliefs of his parents. Consider an example of an inter-religion marriage with two kids taking each other parent's religious belief.

The child who takes his father's religious belief will be granted inheritance, whereas his sibling receives nothing at all for having different religious belief from the father. From the perspective of justice, this is really problematic; and there is a problem concerning the forum for marriage dispute settlement. The legal bodies in Indonesia, apart from recognizing absolute and relative authority, also recognize the Principle of Personality (*asas personalitas*). Religious Court has the authority over the marriage of Moslem citizens, while District Court has the authority over the marriage of non-Moslem citizens. This will be problematic if there is a dispute in a family of inter-religion marriage. There might be a clash of authorities of the two legal bodies/courts that only can be settled by the Supreme Court. If this is the case, solving of the marriage dispute be postponed until later. Thus, settlement on marriage dispute of inter-religion marriage becomes really problematic and complicated (**Karsayuda, 2006**).

Recently, lawsuit regarding judicial review of Article 2 paragraph 1 of the Marriage Law which prohibits inter-religion marriage has been brought before the Indonesian Constitutional Court. The plaintiffs argue that prohibition on inter-religion marriage is a violation against constitutional rights. Therefore, it has to be revoked to allow inter-religion marriage in Indonesia. The plaintiffs further elaborate that it is time for the estate to no longer be over-attentive towards religious values, and leave the matters of religious belief into the citizens. The judicial review is on Article 2 paragraph 1 of the Marriage Law which, as argued by the plaintiffs, are violating several Article in the 1945 Constitution. Those articles are as followed:

- a. Article 27 paragraph 1 “every citizen is equal before law and government, and has the duty to uphold the law and the governmental system without any exception.”;
- b. Article 28B paragraph 1 “every citizen has the right to form a family and continue his/her ancestral line through a valid marriage.”;
- c. Article 28D paragraph 1 “every citizen has the right to recognition, assurance, protection, and legal certainty as well as fair and equal treatment before the law.”;
- d. Article 28E paragraph 1 “every citizen has the freedom to choose his/her religion and to perform the ceremonies of his/her chosen religion; the freedom to choose his/her own education, to choose a profession, to choose a citizenship, to choose an area of the state where he/she will stay, and has the right to leave it and return.” Paragraph 2 “every citizen has the freedom to believe, and to express his/her opinion based on good conscience.”;
- e. Article 28I paragraph 1 “every citizen has the right to live, right not to be tortured, right to freedom of mind and conscience, right to choose a religion, freedom from slavery, right to recognition of the law, and right to be relieved from invalid legal accusation. These are indivisible, basic human rights.”;
- f. Article 29 paragraph 2 “The state assures the freedom of each of the citizen to choose a religion and to hold religious ceremonies and services.”

Inter-Religion Marriage According to Study and Peace Center NGO (ICRP)

Religion and Peace Study Center NGO (ICRP) is an institution facilitating and mediating couples who want to execute inter-religion marriage in Indonesia. The aim of this institution is for the couples who want to get inter-religion marriage, can still obtain their rights to have households, have descendants, and be happy. Those are civil rights of the citizen that have to be fulfilled. ICRP prioritized the couple in the inter-religion marriage to stay holding onto their respective religions and the marriage shall be executed twice consecutively, complied to the two religions. It is noted that ICRP already helped 907 couples across Indonesia to hold inter-religion marriage. Among those number, 99% was registered in Population and Civil Registration Office while the 1% other has not yet been registered, since several documents are not yet being accomplished.

Achmad Nurcholish (Nurcholish, Interview, 25 October 2018), an activist in ICRP institution states that the number of couple who execute inter-religion marriage is increasing each year. In average, there are 8 (eight) to 12 (twelve) percent of couples from all married couple who execute inter-religion marriage each month. While for counseling, there are about 15 (fifteen) to 20 (twenty) couples each month.

According to Nurcholish, there are several biggest impediments faced by ICRP in helping these couples who want to get inter-religion marriage in Indonesia. First, is from the parents and/or families of each couples, who have hard times in accepting inter-

religion marriage. Second, public officer who does not understand the constitution and/or have bias towards religious ideology, they see inter-religion marriage is prohibited, while in fact, there is no prohibition. Third, existence of religious figures, which mostly against the inter-religion marriage.

He also gave his comment on the Marriage Law which does not regulate inter-religion marriage. On his note, in the said law, there is indeed no regulation on inter-religion marriage. However, referring to the Article 2 paragraph (1) of the Marriage Law, inter-religion marriage is possible through procession in compliance with the 2 (two) respective religions of the couple. That matter is strengthened by Decision of Supreme Court Number 1400K/PDT of 1986 which states that difference of religion shall not hamper a couple to get married.

With respect to the Fatwa from Council of Indonesian Ulema (Fatwa MUI) which states that inter-religion marriage is prohibited, he argued that it is not considered as law. The fatwa is only religious view and does not bind, hence the provisions within might be or might not be followed. Among the Muslims themselves, there are 3 (three) views (mahzab), those are: prohibiting inter-religion marriage as how MUI does, permitting if only the man is Muslim, and permitted even if the woman is Muslim.

Most people see the condition in this country as having lack of understanding towards the fact regarding inter-religion marriage, nonetheless still helping to give solution. Nurcholish also see that it is a must for Marriage Law to be amended, whereas marriage between religion is clearly accommodated despite that in fact it is indeed not easy. Other option is by enacting regulation specialized for inter-religion marriage as other countries do, where states do not intervene too much and only take roles in registration.

Legal Consequence on the Execution of Cross-Religion Marriage

Marriage is a legal action. It results a ties rights and obligations causing a form of life together from the persons performing that. Marriage as a legal action has a consequence as regulated by law which can divided into 3 (three) part, as the law arising from the relationship between husband and wife itself (it stipulated in Article 30 to Article 34 of Marriage Law); a consequences arising from a marriage towards their inheritance properties (stipulated in Article 35 to Article 37 of Marriage Law), and; a consequence arising from a marriage towards parents' power (rights and parental obligations) of their children (stipulated in Article 45 to Article 49 of Marriage Law).

By executing an inter-religion marriage, it will cause a different legal consequence. As mentioned before, inter-religion marriage is not provided in any regulations in Indonesia, not in Marriage Law itself. Such, there is no rule set about the legal consequences towards the inter-religion marriage. However, by the author's concern, inter-religion marriages arise several legal consequences, as follows:

First, Legal Consequence Towards Marriage Status. Referring to the Article 2 paragraph (1) and Article 8 alphabet f of Marriage Law, it can be concluded that whether

inter-religion marriage is permitted or not, it shall be handed back over to the respective religions and beliefs. Pursuant to the Marriage Law, either in its articles or in its descriptions, there is no strict regulations on the inter-religion marriage. Provisions in the Article 2 paragraph (1) only states that marriage is valid to a person if it is executed in accordance with his/her religion and belief. With that provision, it is as if there is a freedom with no limitation to the religions and beliefs to determine regulations and provisions on marriage at will. Most of religions in Indonesia prohibit marriage between persons in different religion. In Islam, the prohibition provisions stipulated in the Al Quran Surah Al-Baqara verse 221, Al-Mumtahanah verse 10 which states *“when the believing women come to you as emigrants, examine them. Allah is most knowing as to their faith. And if you know the, to be believers, then do not return them to the disbelievers; they are not lawful (wives) for them, nor they are lawful (husbands) for them.”*, Article 44 of KHI, and Fatwa from Council of Indonesian Ulema in 2005. So does in Christian, it prohibits inter-religion marriage among its believer and people with different religion. For that reason, provisions on inter-religion marriage are handed over to the respective religions and beliefs by the Marriage Law. Inter-religion marriage is prohibited by various religions in Indonesia, which resulted into its invalidity.

Second, Legal Consequence Towards Marriage Registration. Marriage registration is an important element for the validity of marriage. Marriage registration holds the same place with other important events in someone's life, it is declared in a marriage certificate, a formal deed which is also written in registration list. The purpose of the registration itself is to give legal certainty and give protection and legal force for the couple who executed the marriage and for their families. Article 2 paragraph (2) of the Marriage Law states that each marriage shall be registered in accordance with the prevailing rules and regulations. Article 34 paragraph (1) of the Law Number 23 of 2005 which has been amended by Law Number 24 of 2013 concerning Citizenship Administration (hereinafter Adminduk Law), states as follow: *“A valid marriage pursuant to the rules and regulations are obligated to be reported by the citizens to the exercising institution at the place of marriage no later than 60 (sixty) days after the date of marriage.* The provision on the inter-religion marriage registration is regulated under Article 35 alphabet a of Adminduk Law, which states that a marriage stipulated by the court must be reported. In its description referred to in the Article 35 alphabet a of Adminduk Law, marriage stipulated by the court are the ones executed between persons with different religion.

The Marriage Law divides Indonesian people into Muslim and non-muslim (**Permatasari, 2018**). Marriage for Muslim citizens are registered in the Office of Religious Affairs in Sub-district, it is in accordance with the rules and regulations (**Bedner, 2010**). Meanwhile, marriage between Muslims and non-Muslims are only registered in Civil Registry Office (**Permatasari, 2018**). This is based on the Article 2 of the Government Regulation of 1975 which mentioned that registration of marriage executed in accordance with Islamic law, shall be done by Registration Officer as referred

to in the Law Number 32 of 1954 concerning Marriage Registration, Divorce and Reconciliation. And, Registration of marriage executed in accordance with their respective religions and beliefs aside from Islam, shall be done by marriage Registration Officer at Civil Registration Office as referred to in various laws concerning marriage registration.

Registration of inter-religion marriage between Muslim and non-Muslim must be based on court stipulation. If the court gives stipulation and approval to register the marriage, only then, the officer from Population and Civil Registration Office can register the marriage. If the inter-religion couple register their marriage without court stipulation, then the officer shall automatically reject the registration application. (Nugraha, Interview, 5 September 2018).

Third, Legal Consequence Towards Inheritance of Properties. Legal consequence arise from a marriage is not only limited towards the family relationship, but also towards properties in marriage. Marriage property in Islam called as *syirkah*, it is a unification or merger of someone's properties with his/her partner in marriage. Marriage properties are used to fulfill all needs in family life (Judiasih, 2015).

Marriage is one of many reasons to obtain inheritance. Marriage and inheritance law are two related matters in human's life. Marriage arising inheritance relationship one another between husband and wife (Istiqlamah, 2017). In Islamic law, it is stipulated in QS. An-Nisa (4) verse 11 and 12 which state that wife and husband have rights to inherit properties of one another, the correlation between their rights comes from marriage.

In Islamic law provision there are 3 (three) reasons why a person can get an inheritance, that is because of descendant, marriage, and *wa'la* (setting slaves free). However, in this regard, descendancy and marriage shall not be applicable if the husband and wife have different religion. One of the matters that can impede inheritance is difference of religion between the person giving inheritance and the beneficiary. It is quoted in a *hadits* that "A muslim cannot give inheritance to a disbeliever (and vice versa), and a disbeliever cannot give inheritance to a Muslim." (HR Bukhari dan Muslim).

If it is seen from Islamic Inheritance Law point of view, a child born to an inter-religion marriage or beneficiaries who have different religion with the person who gives the inheritance, do not have rights to receive inheritance of properties, in case they have different religion, in which the beneficiary is a Muslim. Article 171 alphabet c of Islamic Law Compilation defines beneficiary as a person who has connection by blood or by marriage with a deceased person leaving his/her inheritance of properties, which is a Muslim and does not have impediments by law to become a beneficiary. That provision implicitly states that a non-Muslim beneficiary shall have impeded position.

The provision that prohibits a Muslim and non-Muslim to inherit properties from one another is also supported by Fatwa from Council of Indonesian Ulema Number 5/MUNAS VII/MUI/9/2005 concerning Inheritance in Different Religion which states that Islamic Inheritance Law does not give rights for people with different religion to

inherit properties one another (between Muslim and non-muslim), transfer of properties among people with different religion can only be done through *hibah*, testament, and gifts.

However, there is difference of argument on the inter-religion inheritance law sourced from Decision of Supreme Court. The Decision of Supreme Court Number 16 K/AG/2010 states that besides Muslim beneficiary in that case, non-Muslim beneficiary also have rights in obtaining his/her portion of the inheritance properties left by a Muslim person based on *Wajibah* Testament (a testament determined by rules and regulations, given to adoptive parents who do not received testament from deceased person giving inheritance). Such decision becomes unique since it shows the development of judge's decision regarding Islamic inheritance (**Erwandi, 2016**). The decision is almost similar to the Supreme Court Decision Number 368 K/AG/1995 which stipulates that a non-Muslim biological daughter cannot have a legal status as beneficiary; however she can obtain a portion from the properties left by her deceased parents based on *wajibah* testament, in the same portion with the Muslim biological daughter.

Another argument stated by Nurcholish of ICRP, he argues that when the heirs set their heir not using the Islamic Law but uses a deliberative manner and reach a consensus, then the heir between Muslim and non-Muslim can be implemented as long as there has been an agreement of all the family. Hence, it can be concluded that based on the provision of Islamic law, inheritance law between couple with different religion is not possible. However, based on the said stipulation of Supreme Court, which is believed to be the newest development in Islamic law by considering non-Muslim beneficiary as valid to receive inheritance from a Muslim, it shows that inter-religion inheritance is possible.

Fourth, Legal Consequence Towards Status of Guardian for Marriage. Article 19 of KHI states that it is a principle for a marriage to have a guardian, it must be fulfilled by the bride, as the person in charge for the marriage vow. Existence of guardian in marriage has a very important legal means. Marriage considered as annulled if there is no guardian. This requirement shows that Islam gives a noble position for the guardian. Article 20 paragraph (1) of KHI states that a guardian has to be a man fulfilling Islamic Law requirements, which are: a Muslim, can differ rights and wrong (*aqil*) and mature (*baligh*).

Based on Islamic law, a guardian can be a father, grandfather and other vertical upward relatives, brothers (older or younger), nephew, uncle from father side, and father's brother. They are called *nasab* or wise guardian, male family members who have patrilineal relationship with the bride.

In certain condition, based on the prevailing law, if there is no guardian who can fulfill the requirements of the said order, or the guardian has different religion, then it is permissible to appoint a magistrate guardian (**Erwandi, 2016**). A magistrate guardian is a guardian for marriage appointed by the Minister of Religious Affairs or the authorized

officials appointed by the Minister of Religious Affairs, this guardian has the right and authority to be a guardian for marriage.

A daughter born onto inter-religion marriage which has different religion with his father, will make this father ineligible to become guardian for her marriage. This is due to the fact that he does not fulfill requirements to become a guardian according to Islamic principle, which is a Muslim. In case of a guardian act for a marriage despite he has different religion, the marriage shall be invalid. This is also supported by the provision in Surah An-Nisa verse 141 and 144 which states that *God will give the disbelievers no means of overcoming the believers. (QS. An-Nisa: 141)* And, *“O you who believe! Do not befriend disbelievers rather than believers. Do you want to give God a clear case against you?” (QS. An-Nisa: 144)*. Thus, a non-Muslim father shall have no right to become a guardian for his daughter's marriage. Since the guardian for the Muslim must also be a Muslim. A non-Muslim cannot become a guardian to the Muslims.

Conclusion

Inherently, Indonesia prohibits inter-religion marriage practices where this can be seen from various rules and various statements from several religions. However, this does not condemn the Indonesian people to practice interfaith marriages in various ways. Although it is realized that this will lead to various legal aspects that arise in the future, for example related to marital status, inheritance assets, marriage records, and guardian status of marriage. Regarding inter-religion marriages carried out outside the country of Indonesia, it raises a polemic regarding the validity of its registration in Indonesia, but given the principle of vested rights also implemented in Indonesia, registration of inter-religion marriages held abroad can be registered in Indonesia.

Suggestion

The government should form a strict rule on inter-religion marriage among religions that maintain public order in society. Moreover, in Marriage Law, it should be add a new provisions which regulate the legal consequences that arise from the prohibited inter-religion marriage in Indonesia. Such, there will be no vacuum of law (*rechts vacuum*), and avoid a various misinterpretation of an inter-religion marriage.

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